

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

DANZEL C. RUSHING, )  
                        )  
Plaintiff,           )  
                        )  
v.                    )           **CIV-05-995-R**  
                        )  
BEN LEHEW, et al., )  
                        )  
Defendants.         )

**O R D E R**

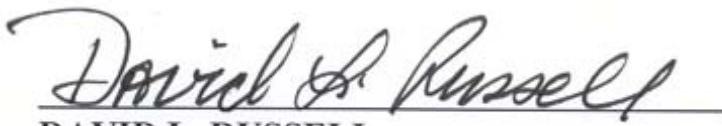
Before the Court are the Report and Recommendation of United States Magistrate Judge Robert E. Bacharach entered December 8, 2006 [Doc. No. 87]; Plaintiff's belatedly-filed Objection to the motion of Defendants Lehew, Ruppert and Berry to dismiss Plaintiff's Complaint [Doc. No. 88], filed December 27, 2006; "Plaintiff's Motion to Object on the Defendant's Claims, Report and Recommendation" [Doc. No. 89], filed January 3, 2007; and "Plaintiff's Reassertion of His Request for Assistance of Counsel at Order of the Court [Doc. No. 90]", filed January 3, 2007.

Plaintiff's response to the motion of Defendants Lehew, Ruppert and Berry was due on or before November 15, 2006. See Doc. No. 81. Hence, the Objection [Doc. No. 88] is STRICKEN because it is untimely and because it was not mailed to Defendants' counsel as required by F.R.Civ.P. 5(d) and LCvR 5.5. Plaintiff's Motion to Object [Doc. No. 89] is also untimely, *see* Report and Recommendation at p. 10 (any objection to the Report and Recommendation must be filed by December 28, 2006), and contains no certificate of service. Hence, that pleading is STRICKEN as well. Finally, Plaintiff's Reassertion of His

Request for Assistance of Counsel [Doc. No. 90] does not contain a certificate of service and is therefore STRICKEN.

The Court has nevertheless reviewed all of Plaintiff's pleadings [Doc. Nos. 88, 89 & 90] and finds no cogent objection to the Report and Recommendation or cogent reason not to adopt the Report and Recommendation. Therefore, the Report and Recommendation entered December 8, 2006 [Doc. No. 81] is ADOPTED in its entirety, Plaintiff's claims against Defendant Lehew are DISMISSED with prejudice pursuant to F.R.Civ.P. 37(b)(2); Plaintiff's Complaint against Defendants Ruppert and Barry is DISMISSED without prejudice pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) & 1915A(b)(1) for failure to state a claim on which relief can be granted; and Plaintiff's Complaint against all remaining Defendants is DISMISSED without prejudice for failure to timely effect service.

**It is so ordered this 9<sup>th</sup> day of January, 2007.**



DAVID L. RUSSELL  
UNITED STATES DISTRICT JUDGE